

Before the  
**Federal Communications Commission**  
Washington, DC 20554

In the Matter of

Use of Portions of Returned 2 GHz Mobile  
Satellite Service Frequencies

IB Docket No. 05-220

**COMMENTS OF SIRIUS SATELLITE RADIO INC.**

Sirius Satellite Radio Inc. (“Sirius”), by its attorneys, hereby comments on the Federal Communications Commission’s (“FCC” or “Commission”) proposal to distribute a portion of newly-surrendered 2 GHz Mobile Satellite Service (“MSS”) spectrum to ICO Satellite Services (“ICO”) and TMI Communications and Company Limited Partnership (“TMI”).<sup>1</sup> Sirius supports the FCC’s efforts to ensure that this scarce satellite spectrum is used efficiently. However, Sirius urges the FCC not to assign nearly half of this newly available 2 GHz spectrum to ICO and TMI, unless and until the agency determines that no other use of the surrendered spectrum would better serve the public interest.

**I. BACKGROUND**

In 2001, the FCC authorized eight satellite companies to provide 2 GHz MSS, and divided 70 MHz of spectrum amongst them. In 2003, the FCC revoked three licenses, reallocated 30 MHz of the original 2 GHz MSS spectrum to terrestrial wireless and increased the

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<sup>1</sup> *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, Public Notice, FCC 05-133, IB Docket No. 05-220 (June 29, 2005) (“2 GHz Redistribution Public Notice”). In addition, in a related proceeding, the FCC seeks comment on proposals to redistribute or reallocate the remainder of the surrendered spectrum. *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, Public Notice, FCC 05-134, IB Docket No. 05-221 (June 29, 2005) (“2 GHz Surrendered Spectrum Public Notice”).

spectrum assignments of the remaining five licensees.<sup>2</sup> As a result, TMI and ICO each hold 8 MHz paired spectrum out of the 40 MHz presently allocated to 2 GHz MSS.<sup>3</sup> This year, three more operators surrendered their authorizations. Thus, 24 MHz of 2 GHz MSS spectrum is currently unassigned.

On June 29, 2005, the FCC released two public notices concerning the newly surrendered spectrum. In the above-captioned proceeding, the FCC suggests augmenting again ICO's and TMI's spectrum reservations such that each would hold one-third of the 40 MHz total bandwidth (approximately 13 MHz each).<sup>4</sup> In a second related proceeding, the FCC seeks comment, later this month, on proposals to redistribute or reallocate the remaining one-third spectrum.<sup>5</sup>

## **II. THERE IS NO IMPETUS TO ASSIGN TMI AND ICO ADDITIONAL SPECTRUM.**

The FCC has made clear that there is no pre-ordained policy for redistributing surrendered 2 GHz spectrum. In the *AWS Third Report and Order*, the FCC stated, "we have not established nor do we do so here any policy or rule regarding the use of additional abandoned spectrum that may result after future MSS milestone reviews are completed."<sup>6</sup> Therefore, the FCC is not compelled to assign any surrendered spectrum to ICO and TMI.

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<sup>2</sup> *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, 18 FCC Rcd 2223 (2003) ("AWS Third Report and Order").

<sup>3</sup> *ICO Satellite Services G.P., Application for Modification of 2 GHz LOI Authorization*, DA 05-1504, ¶ 36 (Int'l Bur. May 24, 2005); *TMI Communications and Company, Limited Partnership, Application for Modification of 2 GHz LOI Authorization*, Memorandum Opinion and Order, 19 FCC Rcd 12,603, 12,623 (¶ 60) (2004).

<sup>4</sup> 2 GHz MSS Redistribution Public Notice, at 1.

<sup>5</sup> 2 GHz MSS Surrendered Spectrum Public Notice, at 1.

<sup>6</sup> *AWS Third Report and Order*, 18 FCC Rcd at 2240 (¶ 32); see also *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order,

Moreover, it would be premature to assign additional spectrum to ICO and TMI. It is the FCC's long-standing practice to condition follow-on spectrum on commercial experience and, in particular, system loading.<sup>7</sup> Here, ICO's and TMI's systems are not yet constructed. Similarly, in the Big LEO context, the FCC made clear that it would *require detailed information* from the remaining licensees about their operations and spectrum requirements before assigning additional spectrum.<sup>8</sup> Increasing ICO's and TMI's spectrum assignments without similar evidence of spectrum needs would not serve the public interest.

### **III. THE FCC SHOULD CONSIDER ALL OPTIONS BEFORE ASSIGNING ANY PART OF THE SURRENDERED SPECTRUM.**

The FCC should not assign additional 2 GHz MSS spectrum to ICO and TMI before it fully considers other public interest uses of the surrendered spectrum. As the Public Notices indicate, several parties have submitted letters "recommending various uses for the newly available spectrum."<sup>9</sup> In response to these letters, the FCC has invited comment later this month

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15 FCC Rcd 16,127, 16,139 (¶ 18) (2000) ("2 GHz MSS Order") ("Spectrum abandoned by authorized systems may be available for expansion of systems that are operational and require additional spectrum. We do not, however, establish a policy or rule for redistribution of abandoned spectrum here.").

<sup>7</sup> See, e.g., *Amendment of Part 90, Subparts M and S, of the Commission's Rules*, Report and Order, 3 FCC Rcd 1838, 1842 (¶ 39) (1988) ("[N]o licensee can obtain additional channels if its existing channels are not fully loaded."); 47 C.F.R. § 90.658(d) ("The FCC will use the loading data required by this section to determine whether the licensee's existing system has a sufficient number of mobiles as required by [our rules] to qualify for additional channels.").

<sup>8</sup> *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order, 18 FCC Rcd 1962, 2090 (¶¶ 267-69) (2003) ("Big LEO NPRM") ("[W]e seek detailed comment regarding its actual current spectrum use and substantiated projections of its future spectrum requirements. ... We also seek technical information on Iridium's current and projected spectrum use. We seek comment on how efficiently Iridium is using its current spectrum and, if we were to make more Big LEO spectrum available, exactly how much additional spectrum would be appropriate. ... In addition, we seek comment on how Globalstar is using its assigned spectrum.").

<sup>9</sup> 2 GHz MSS Redistribution Public Notice, at 1; 2 GHz MSS Surrendered Spectrum Public Notice at 1.

on possible uses for the surrendered spectrum, including “reallocation for another service.”<sup>10</sup>

The FCC should obtain and review the public interest benefits of the proposals it requested before increasing ICO’s and TMI’s current spectrum assignments.

Indeed, the FCC has stated that it will consider all options “to ensure that the [2 GHz MSS] spectrum is used efficiently and effectively” including “the reallocation of spectrum.”<sup>11</sup> Accordingly, as 2 GHz MSS spectrum has become available, the FCC has not automatically “designat[ed] ... additional spectrum” to 2 GHz MSS licensees.<sup>12</sup> Instead, the FCC has taken “the opportunity” to consider “new proposals for use of the 2 GHz MSS bands.”<sup>13</sup> Here as well, the FCC should consider all options for the surrendered spectrum before deciding whether to increase ICO’s and TMI’s spectrum reservations.<sup>14</sup>

The current bifurcated process, however, is inefficient for addressing the surrendered spectrum and unnecessarily constrains both public input and the FCC’s review of proposed uses for the spectrum. Thorough examination of the proposals for the surrendered spectrum in a

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<sup>10</sup> 2 GHz MSS Surrendered Spectrum Public Notice at 2.

<sup>11</sup> *AWS Third Report and Order*, 18 FCC Rcd at 2238 (¶ 29).

<sup>12</sup> *ICO Services Limited, Letter of Intent to Provide Mobile-Satellite Service in the 2 GHz Bands*, Order, 16 FCC Rcd 13,762, 13,765 (¶ 8) (Int’l Bur. 2001) (“*ICO 2 GHz MSS Order*”). *ICO 2 GHz MSS Order*, ¶ 8. Similarly, in the Big LEO proceeding, where the FCC had not adopted any *a priori* spectrum re-distribution plan, the FCC first sought “comment on both the possible reassignment and possible reallocation of any returned spectrum for possible use by other services.” *Big LEO NPRM*, 18 FCC Rcd at 2088-89 (¶ 265).

<sup>13</sup> *ICO 2 GHz MSS Order*, 16 FCC Rcd at 13,765 (¶ 8). For example, the FCC considered and adopted proposals to reallocate part of the 2 GHz MSS spectrum in the *AWS Third Report and Order*. See generally *AWS Third Report and Order*. Indeed, given that the FCC previously reallocated 2 GHz MSS spectrum through a rulemaking proceeding, it is curious that the FCC has not initiated a rulemaking proceeding in this instance.

<sup>14</sup> This is particularly true because ICO and TMI already hold nearly double the amount of spectrum that the FCC initially assigned 2 GHz MSS licensees, and both licensees remain authorized to operate throughout the entire band (outside of their selected assignments) on a secondary basis. Moreover, the FCC has been reluctant to assign additional spectrum to 2 GHz licensees—especially given the potential value of the spectrum to other services. See, e.g., *ICO 2 GHz MSS Order*, 16 FCC Rcd at 13,765 (¶ 8).

single proceeding would best encourage development of a more complete record prior to rendering a decision.

Absent operational systems,<sup>15</sup> neither the public nor the licensees would be prejudiced by a comprehensive review. Therefore, the FCC should fully consider whether reallocating the spectrum or increasing TMI's and ICO's spectrum assignments would result in the most efficient use of spectrum.

#### **IV. CONCLUSION**

Based on the forgoing, Sirius respectfully urges the FCC not to assign ICO and TMI additional spectrum until it considers the proposed public interest benefits of other reallocations.

Respectfully submitted,

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<sup>15</sup> Based on the current milestones, ICO's and TMI's systems are not scheduled to be operational until July 2007 and November 2008, respectively.